

NORTH CAROLINA

LEASE AGREEMENT

DURHAM COUNTY

THIS LEASE AGREEMENT is made and entered into this the \_\_\_\_ day of June, 2013, by and between the CITY OF DURHAM, a North Carolina municipal corporation (hereinafter the "City"), and THE DURHAM BULLS BASEBALL CLUB, INC., a North Carolina corporation (hereinafter the "Club"). CAPITOL BROADCASTING COMPANY, INCORPORATED, a North Carolina Corporate, joins in this Agreement for the limited purpose of providing certain guaranties as described in Article 24.

W I T N E S S E T H:

WHEREAS, Club is a member of, and owns and operates a minor league professional baseball franchise in, the International League of Professional Baseball Clubs, Inc., a Triple-A level of professional baseball; and

WHEREAS, providing the public with an opportunity to attend and view Club Home Games and other events in the Ballpark serves the recreational and cultural needs and general welfare of the public and is in the best interests of the City and its citizens; and

WHEREAS, the City desires to lease use of the Ballpark to Club, and Club desires to lease use of the Ballpark from the City, at the times and pursuant to the provisions set forth in this Agreement; and

WHEREAS, Club is a wholly owned subsidiary of Capitol Broadcasting Company, Incorporated, a North Carolina corporation (hereinafter the "Guarantor"); and

WHEREAS, to induce the City to enter into this Agreement, Guarantor agrees to provide the guaranties contained in Article 24 and to execute this Agreement for the limited purpose of providing such guaranties to the City;

WHEREAS, the City and Club have, contemporaneously with this Agreement, entered into the Development Agreement, which, among other things, describes the rights and obligations of the parties in undertaking certain improvements and renovations of the Ballpark.

NOW, THEREFORE, for and in consideration of the foregoing premises and the terms, conditions, covenants and undertakings contained in this Agreement, the City and Club mutually agree as follows:

ARTICLE I – PREVIOUS AGREEMENTS

1.1 Previous Agreement and Amendments.

1.1.1 The City and Club entered into a certain agreement titled "Agreement of Lease between City of Durham, Lessor, and Durham Bulls Baseball Club, Inc., Lessee," dated September 3, 1992 (the "Original Agreement"). The parties amended the Original Agreement by an instrument titled "Amendment Number One to Lease Agreement," dated April 5, 1995; by an instrument titled "Amendment Number Two to Lease Agreement," dated August 29, 1996; by an instrument titled "Amendment Number Three to Lease Agreement," dated December 22, 1998;

by an instrument titled "Amendment Number Four to Lease Agreement," dated February 6, 2001; and by an instrument titled "Amendment Number Five to Lease Agreement," dated January 19, 2006, which Amendment Number Five was later rescinded and replaced pursuant to an instrument titled "Corrected Amendment Number Five to Lease Agreement," dated September 11, 2007; and by an instrument titled "Amendment Number Six to Lease Agreement," dated September 11, 2007.

1.1.2 This Agreement shall modify and replace the Original Agreement and each of the amendments referred to in Section 1.1.1 in their entirety as of the Effective Date. Prior to the Effective Date, the Original Agreement and each of the amendments shall remain in full force and effect.

## ARTICLE II - DEFINITIONS AND INTERPRETATION

2.1. Definitions. For all purposes of this Agreement, the following terms shall have the meanings specified in this Section.

- (a) "Additional Rent" has the meaning set forth in Section 5.2.
- (b) "Affiliate" means any Person(s) who owns any of Club, who is wholly or partially owned by Club, or who wholly or partially owns or is wholly or partially owned by the Persons who own any of Club.
- (c) "Agreement" means this Agreement between the City and Club, as may be amended from time to time.
- (d) "ADA" means the Americans With Disabilities Act.
- (e) "Annual Breakpoint" has the meaning set forth in Section 5.2.1.
- (f) "Annual Cap on Maintenance and Repairs" means Two Hundred Thousand No/100 Dollars (\$200,000.00) during the 2014 calendar year, which amount will increase or decrease each year based upon the Consumer Price Index, provided that the amount of any annual increase or decrease shall not exceed three percent (3%).
- (g) "Ballpark" means the facility owned by the City commonly known as of the date of this Agreement as Durham Bulls Athletic Park.
- (h) "Base Rent" has the meaning set forth in Section 5.1.
- (i) "Baseball Season" means the date that is thirty (30) days prior to the scheduled first Club game each season through the date each year when Club has finished playing Club Home Games including any playoff games the Club may participate in.

(f) “Broadcasting” means the broadcasting or distribution of a broadcast signal by television, cable television, radio, fiber, satellite, microwave, broadband, internet, cellular, mobile devices, or otherwise of any Club Home Game, any Club away game, or any Special Event.

(g) “Broadcast Improvements” shall be defined as provided in Section 10.2.

(h) “Capital Maintenance and Repairs Items” means the items listed in Exhibit B, as amended from time to time by the Parties to address capital expenditure improvements made to the Premises during the Term, such as those contemplated under Article 15, Alterations and Improvements.

(i) “Club’s Annual Maintenance and Repairs Obligation” means the maximum amount Club will be responsible for paying in any given calendar year for the maintenance, repair, and replacement of the Capital Maintenance and Repair Items.

(j) "Club Home Game" means any professional baseball game played by Club, including exhibition, preseason, regular season, playoff games, and championship games played in the Ballpark, except that Club Home Game shall not include the Triple-A National Championship Game.

(k) "Concessions" means beer, wine coolers, liquor, nonalcoholic beverages, confections, peanuts, popcorn, ice cream, tobacco products, hot dogs, hamburgers, and all other food and nonalcoholic beverage items; souvenirs; novelties; programs and publications; promotional materials; items bearing Club's insignia or the insignia of other teams in the National Association or the Major Leagues; and any other similar or incidental items customarily provided to patrons at baseball games or other events in ballparks of the same type as the Ballpark.

(l) "Consumer Price Index" means the average change in the prices paid by urban consumers in the South Region for all items for 1982 to 1984=100 as released by the United States Department of Labor, Bureau of Statistics.

(m) “Development Agreement” means that certain “Agreement for the Redevelopment and Renovation of Durham Bulls Athletic Park,” dated \_\_\_\_\_, 2013.

(n) “Durham Athletic Park” means the baseball stadium, owned by the City, located at 500 W. Corporation Street, Durham, North Carolina.

(o) “Durham Bulls Athletic Park” means the baseball stadium, owned by the City, located at 409 Blackwell Street, Durham, North Carolina.

(p) “Effective Date” means January 1, 2014.

(q) "Event of Default" means one or more events of default as set forth in Article 22.

(r) "Facility Standards" means the facility requirements that Club is required to comply with pursuant to Club's membership in the National Association, which standards may be amended or modified from time to time.

(s) "Force Majeure" means, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of restraints of any kind of the government of the United States of America or of the State of North Carolina or any of their departments, agencies or officials, or any other govern-mental, civil or military authority; insurrection; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accidents to machinery, transmission pipes or canals; or any other cause or event not within the reasonable control of the City or Club, as the case may be, but not due to the negligence of the City or Club, as the case may be.

(t) "Gross Revenues" means, as determined in accordance with the then current and generally accepted accounting principles applied by Club in a consistent manner, all gross revenues and other items of value accruing to or on behalf of Club or any licensee, concessionaire or other person authorized by Club during a calendar year arising out of or relating to: (i) Club Home Games, (ii) Club's souvenir stores located in the Ballpark or (iii) Off-Site Signage operated during Club Home Games. For Club Home Games and Special Events, the calculation and accrual of Gross Revenues shall be the same regardless of whether Gross Revenues accrue by direct sales by Club or are on account of or pursuant to any license, concession or other agreement or authorization by Club to provide or grant to another person the right to sell Concessions or any other products or services on the Premises. Gross Revenues shall include, by way of illustration but not limitation: admissions, ticket sales, Concessions, advertising on-site or in publications or materials distributed on the Premises, signage, on-site promotions, licensing fees for automated teller or cash dispensing machines, and proceeds of business interruption insurance, if any. Gross Revenues shall not include: (i) revenues from Broadcasting; (ii) state and county sales taxes, franchise taxes, gross receipts tax or privilege tax pursuant to N. C. Gen. Stat. § \_\_\_\_\_ payable by Club in connection with the sale of tickets, Concessions, products or services; (iii) any ticket surcharge imposed by the County of Durham or any other entity with taxing authority in the County of Durham; (iv) revenues received by Club as royalties for the licensing of Club's insignia to persons selling goods containing Club's insignia; (v) revenues received by Club from any on-line or mail order business, other than the sale of tickets to Club Home Games; (vi) revenues received by Club from any Club retail outlets not located on the Premises, other than the sale of tickets to Club Home Games; (vii) the value of a reasonable number of complimentary or promotional tickets, unless Club receives goods, services or other items of value other than advertising time or space; and (viii) the revenues generated by any restaurant or other business that is located adjacent to the Premises.

(t) "Legal Requirements" means all material laws, statutes, ordinances, rules, regulations, permits, licenses, and requirements of all governments or regulatory authorities, that now or hereafter may be applicable to the Ballpark or the Premises and

the operation thereof, including those relating to employees, zoning, building, health, safety and environmental matters, and accessibility of public facilities. "Legal Requirements" also includes intellectual rights of third parties including copyright.

(u) "Maintenance and Repairs Budget" means the budget that Club will prepare and deliver to the City on an annual basis pursuant to Section 8.1.3(e) that projects Club's anticipated costs for Maintenance and Repairs Items.

(v) "Major Leagues" means the National League of Professional Baseball Clubs and the American League of Professional Baseball Clubs.

(w) "National Association" means the National Association of Professional Baseball Leagues, Inc. d/b/a Minor League Baseball.

(w) "Non-Arms Length Transaction" means any transaction: (1) between Club and any Affiliate of Club; or (2) with any person who directly or indirectly has a substantial economic interest in Club or in whom Club has a substantial economic interest. For purposes of this definition: (1) "control" means possession of the power to direct, or cause the direction of, the management of any significant policies of another person; and (2) "substantial economic interest" means: (i) a general partnership interest; or (ii) a limited partner holding an interest of five (5) percent or more; or (iii) a shareholder holding five (5) percent or more of the issued and outstanding voting or non-voting stock; or, if indirectly, the equivalent thereof.

(x) "Off Season" means times of the year other than during the Baseball Season.

(y) "Off-Site Signage" means any and all LED or other signage that may be installed by Club or by an Affiliate of Club that is visible from the Ballpark seats but is installed off the Premises and from which Club may generate sponsorship or advertising revenue.

(z) "Operating Standards" means maintaining and operating the Ballpark and Real Property in a manner (i) consistent with the condition of the Ballpark and Real Property as specified by the as-built plans and specifications, as amended from time to time, for the Premises on file with the City, which as-built plans and specifications shall include the Alterations and Improvements contemplated by Article 15 of this Lease Agreement; (ii) consistent with the Facility Standards; (iii) consistent with professional baseball facilities of the same or similar size, type and quality of construction operated in the United States for professional baseball clubs that are members of the National Association; (iv) consistent with Legal Requirements; (v) consistent with keeping the Premises, including all furnishings, fixtures, and equipment in a clean, sanitary and attractive condition, and (vi) consistent with Club's preventative maintenance obligations described in Section 8.1.1.

(aa) "Other Event" means any Special Event or Third Party Event.

(bb) "Parking Spaces" means Public Parking Spaces and Private Parking Spaces.

(cc) "Person" means an individual, corporation, limited liability corporation, partnership, joint venture, estate or trust.

(dd) "Premises" means the Ballpark and Real Property. The Premises includes all portions of the Ballpark and Real Property.

(ee) "Prime Rate" means the commercial lending rate announced from time to time by Citibank, N.A. or its successors as its prime rate or base rate.

(ff) "Private Parking Spaces" means parking spaces in or on privately owned and controlled parking lots, facilities or property located within one-half mile from any portion of the boundary of the Premises.

(gg) "Professional Baseball Game" means any Club Home Game and any other baseball game or baseball exhibition played in the Ballpark that includes: (i) a team that is a member of the Major Leagues, the National Association or any other professional baseball league; or (ii) consists of players that generally are paid for their services as a baseball player.

(hh) "Prohibited Person" means: (i) any person that is in default or in breach of its obligations under any written agreement with the City, unless the default or breach has been waived in writing by the City; or (ii) any person that has been convicted in a criminal proceeding of a felony; or (iii) any person that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure; or (iv) any person that directly or indirectly controls, is controlled by, or is under common control with any of the foregoing persons. The determination as to whether any person is a Prohibited Person shall be made by the City.

(ii) "Prohibited Uses" means football, softball, soccer, circuses, carnivals, events which feature the operation of motor vehicles on the baseball playing surface of the Ballpark, and events which by their nature will cause damage to the baseball playing surface or other Ballpark facilities unless adequate measures are taken to protect the baseball playing surface.

(jj) "Public Parking Spaces" means public parking spaces: (i) in public parking facilities, where such facilities are located within one-half mile from any portion of the boundary of the Premises, or (ii) on-street, where such spaces are located north of the Durham Freeway (N.C. Route 147) and within one-half mile from any portion of the boundary of the Premises.

(kk) "Real Property" means that certain real property as described in Exhibit A attached to and made a part of this Agreement.

(ll) "Rent" means Base Rent and Additional Rent, either individually or collectively.

(mm) "Risk Manager" means the Risk Manager of the City, or her successor designee.

(nn) "Schedule of Additional Rent" means the report Club will provide to the City on an annual basis pursuant to Section 16.1 that will contain Club's calculation of Additional Rent.

(oo) "Special Event" means an event staged or held in the Ballpark or about the Premises by Club other than a Club Home Game. Special Event also means the Triple-A All Star Game or the Triple-A National Championship Game.

(pp) "Term" means the term of this Agreement, as set forth in Article 4.

(qq) "Third Party Event" means an event staged by an individual or entity that is not an Affiliate of Club.

(rr) "Triple-A National Championship Game" means the game or series of games at which the champions of the respective Triple-A leagues play each other to determine the champion of Triple-A baseball, the location of which games is awarded to a host city and is unrelated to the identity of the participating teams in the game or games.

2.2 Principles of Interpretation. In this Agreement, the singular includes the plural and the plural the singular; words importing any gender include the other gender; reference to statutes, regulations or ordinances are to be construed as including all provisions consolidating, amending or replacing the statute, regulation or ordinance referred to; references to agreements and other contractual instruments shall be deemed to include all subsequent amendments to or changes in such agreements or instruments entered into in accordance with their respective terms; references to persons include: (i) their permitted successors and assigns; and (ii) firms, companies, associations, partnerships, trusts, corporations and other legal entities, as well as individuals; use of the term "include" or "including" shall mean to include or including without limitation; and references to a "Section" or "Article" shall mean a section or article of this Agreement unless otherwise expressly stated.

### ARTICLE 3 - DEMISE OF PREMISES

3.1 Demise of Premises. The City hereby demises and leases use of the Premises to Club, and Club hereby leases use of the Premises from the City, to have and to hold for the uses and purposes set forth herein, upon the terms, conditions, covenants and undertakings, and to the extent set forth in this Agreement.

3.1.1 USA Baseball Space. The City has a pre-existing lease with the United States Baseball Federation d/b/a USA Baseball for approximately 8,843 square feet of office space located on the

Premises (the “USA Baseball Space”) pursuant to a certain lease entitled United States Baseball Federation Lease, which is due to expire on or about January 15, 2015 (the “USA Baseball Lease”),. The City and Club have agreed that upon the expiration or termination of the USA Baseball Lease, Club will be entitled to add the USA Baseball Space to the demised premises of this Agreement, without the payment of any additional Rent. Club will be entitled to use the USA Baseball Space itself, to allow any Affiliate of Club to use the USA Baseball Space, or to sublease or assign such space to third parties that are not Affiliates of Club.

3.1.2 City Maintenance Space. The City has used a portion of the Premises near the maintenance yard in the right field corner of the Ballpark for its own purposes for several years. Within thirty (30) days of the Effective Date, the City will vacate this portion of the Premises, and Club will be entitled to the exclusive use of the area for no additional Rent. In addition, the City shall make available for the exclusive use of Club to perform Club’s obligations under the Agreement certain equipment owned by the City, which equipment is listed in Exhibit C. This equipment will be considered Capital Maintenance and Repair Items.

#### ARTICLE 4 – TERM

4.1 Term. The term of this Agreement shall begin on the Effective Date and shall continue until 11:59 p.m. on December 31, 2033 (the “Initial Term”), unless earlier terminated as provided in this Agreement. If Club exercises any of the options to renew as provided in Section 4.2, the definition of “Term” throughout this Agreement shall include any renewal period.

4.2 Option to Extend Term. Club shall have the option to renew this Agreement for five (5) years, which renewal period would commence upon expiration of the Initial Term. In addition, Club shall have one (1) additional option to renew this Agreement for five (5) years. Each of these two (2) options to renew shall be deemed exercised without providing any notice of renewal unless Club provides written notice to the City that Club will not renew this Agreement, which notice Club must provide on or before nine (9) months prior to the expiration date of the then current term.

#### ARTICLE 5 - RENT

5.1 Base Rent. Club shall pay to the City a Base Rent of One Hundred, Twenty-Five Thousand and No/100 Dollars (\$125,000.00) per year. Club shall pay the Base Rent in equal monthly installments by the tenth (10<sup>th</sup>) day of each and every month from April through September during the Term. The Base Rent shall increase or decrease each year by CPI, subject to a cap of three percent (3%) per year. Club shall provide with each April payment a statement that illustrates what Club believes to be the appropriate amount of Base Rent for that year, including the amount of CPI adjustment that Club believes is appropriate.

5.2 Additional Rent. Club shall pay to the City Additional Rent computed as follows:



5.2.1 Club Home Games. For Club Home Games, Club shall pay to the City three percent (3%) of any Gross Revenues that exceed the Annual Breakpoint. The Annual Breakpoint will be Ten Million, Seven Hundred, Fifty Thousand and No/100 Dollars (\$10,750,000.00). The Annual Breakpoint shall decrease or increase each year by CPI, subject to a cap of three percent (3%) per year.

5.2.2 Special Events. For Special Events, Club shall pay to the City one and 25/100 percent (1.25%) of Gross Revenues.

5.2.3 Third Party Events. For Third Party Events, Club shall pay to the City one and 25/100 percent (1.25%) of any revenues actually received by Club from the Third Party Event, such as rental fees, concessions revenues, or fees for services.

5.2.4 Payment Schedule. Club shall pay any Additional Rent that is owed for a given calendar year on or before May 1 of the following calendar year.

5.2.5 Accrual Basis Accounting for Gross Revenues. Club will record payments as deferred revenue and include them in the Additional Rent calculation for the year in which the revenue is earned, in accordance with generally accepted accounting principles.

5.3 Late Fees. If Club fails to make payment of Base Rent or Additional Rent on the date when such payment(s) is/are due, Club shall be liable for late fees in an amount equal to the Prime Rate plus five percent (5%) per year.

5.4 Non-Arms-Length Transactions. Club shall not engage in any Non-Arms-Length Transaction where any of the purposes of such transaction are to reduce the amount of Gross Revenues. Notwithstanding the foregoing, the City acknowledges it is Club's intent to pursue opportunities for savings in operating costs by evaluating the benefits of merging some or all of the Ballpark operations with the property management operations of real property owned by Affiliates of Club, including Club engaging the services of a Club affiliate to perform services for Club.

5.5 Net Lease. This Lease Agreement shall be deemed and construed to be a net lease. All payments due to the City under this Lease Agreement are net payments to be made without abatement, offsets, counter claims, credits, demand, deduction, set-off or deductions of any kind whatsoever.

## ARTICLE 6 – USE OF BALLPARK AND THE PREMISES

6.1 Exclusive Use by Club During the Baseball Season. During the Baseball Season, Club will have exclusive use of the Premises. Club will play all Club Home Games in the Ballpark.

6.2 Non-Exclusive Use by Club During the Off-Season. During times other than the Baseball Season, Club will have the right to stage or operate Special Events in the Ballpark or on the Premises without the payment of any additional consideration. Club will have exclusive use of the following areas of the Premises:

6.2.1 Club's office areas, including the box office, and, upon expiration or termination of the USA Lease, the USA Baseball Space;

6.2.2 the field maintenance area;

6.2.3 the operations and television production rooms located in the press box;

6.2.4 all concessions and retail areas, including the commissary, any concessions kiosks or portables, and the Club Room;

6.2.5 the Club skybox; and

6.2.6 storage areas.

6.3 Third Party Events. The City and Club desire to encourage Third Party Events in the DBAP provided that such events can be staged in a manner consistent with the requirement that the Ballpark remains compliant with the Facility Standards and with the long-term maintenance needs of the Ballpark. In addition, Club shall have the right to determine the programming mix of all Special Events to be presented in the Ballpark.

6.3.1 Club will negotiate with third parties the terms and conditions under which Third Party Events may occur on the Premises, including the amount of any rental fees or other charges, the date(s) when such Third Party Events will occur, and which Ballpark facilities will be made available for use by the Third Party Event. No Third Party Event will be staged in the Ballpark or on the Premises unless such third party and Club agree on the terms and conditions of any such Third Party Event. The City and Club acknowledge that each party has a stake in ensuring to the fullest extent possible that any Third Party Event that occurs in the Ballpark or on the Premises is staged in a first-class, professional manner. In deciding on the types of Third Party Events to be staged in the Ballpark and about the Premises, and the terms and conditions under which any such Third Party Event will occur, Club shall be required to establish commercially reasonable conditions, and such conditions may include the following:

(a) Club may require any such Third Party Event to engage Club's services or Club personnel if such Third Party Event will use the playing field, any of the concessions facilities, the clubhouse facilities used by the Durham Bulls, any game operations or broadcast facilities in the press box, the playing field lights, the box office or the Ballpark ticket system, the Club Room, or any retail areas. Club also may require any such Third Party Event to engage Club's service or Club personnel to be on-site during the Third Party Event to monitor the Third Party Event and to be available in the event of an emergency or to assist in the event of a problem with the Ballpark facilities.

(b) Club also may require any such Third Party Event to engage Club for janitorial and cleaning services, if Club self-performs such services, or if Club engages the services of an independent contractor for janitorial and cleaning services, then Club may require that the Third Party Event contract with Club's independent contractor for janitorial and cleaning services.

(c) Club will be entitled to require as a condition of any Third Party Event that the third party take commercially reasonable security measures prior to, during, and after the Third Party Event.

(d) Club will be entitled to specify as a condition of any Third Party Event the amount of and type of property or liability insurance that the third party must purchase to cover the Third Party Event, and any other insurance requirements it deems necessary and appropriate under the circumstances, provided, however, that any such requirements shall be commercially reasonable.

(e) Club may also establish any other conditions for the Third Party Event that under the circumstances of the Third Party Event would be considered commercially reasonable.

6.3.2 In negotiating with any third party, Club will be entitled to, but not required to, charge the third party for any or all of the following: a reasonable rental fee; an amount reasonably calculated to pay for any operating costs to be incurred by Club, if any; any Additional Rent generated by the event, an amount reasonably calculated to pay for the measures that are necessary, in the reasonable judgment of Club, to protect Ballpark facilities from damage, including the playing field; and a reasonable profit for Club.

6.4 Prohibited Uses. Club shall neither engage in nor schedule any Prohibited Uses without the prior written approval of the City. Club shall make no use of the Ballpark other than as expressly authorized by this Agreement.

6.5 Level of Play. The Club is and shall remain a member of the National Association and shall field a Triple-A level team, subject to force majeure. If Club shall lose or relinquish its baseball franchise, league affiliation, or player development contract, Club shall continue to be obligated to field a team at the Ballpark for Club Home Games. The number of Club Home Games, the level of play of the Club and the opposing teams, and the league or other affiliation of teams of which the Club is a member, shall all be of an equal or higher number and an equivalent or higher quality than that existing prior to such loss or relinquishment by Club.

## ARTICLE VII – OPERATIONS

7.1 Operations. Club will be responsible for all operations of the Ballpark for Club Home Games, Special Events, and Third Party Events. The City will have no operational responsibilities associated with the Ballpark. Club shall bear all operating costs, and shall maintain and operate the Premises at all times in accordance with the Operating Standards.

7.2 Utilities. Club will arrange for all utility service required to operate the Ballpark and will pay for all utility costs generated by the Ballpark.

7.3 Trash and Recycling.

7.3.1 Club will be responsible for all costs associated with the disposal of all trash and goods that may be recycled. Club shall develop and follow a solid waste reduction program to reduce the volume of solid waste generated from Club's use and occupancy of the Premises.

7.3.2 Club will have the right to use the trash facilities of the Ballpark to dispose of trash and recycling products from any other properties owned, operated, or managed by Club or an Affiliate of Club.

#### 7.4 Energy Efficiency and Water Conservation Program.

7.4.1 Club shall develop and follow a resource conservation program to manage and use all Ballpark utilities in an energy-efficient and water-conserving manner.

7.4.2 Subject to the City's approval, which shall not be unreasonably withheld, conditioned, or delayed, Club will have the right at its sole cost and expense at any time during the Term to make improvements to the Ballpark that have the effect of increasing the operating efficiency of the Ballpark or that reduce the cost of utilities.

#### 7.5 City's Terraplas.

7.5.1 The City owns Terraplas that it has made available for event organizers who desire to stage events on the playing field of the Ballpark. The City desires to assign to Club the responsibility of storing, cleaning, set-up for events and removal after events to Club. Club has agreed to assume this responsibility without the payment of any compensation from the City.

7.5.2 No more than sixty (60) days after the Effective Date, Club will arrange to accept delivery of the Terraplas from the City by removing the Terraplas from the City's storage facility to a storage facility that Club selects. The City acknowledges that Club may elect to store the Terraplas at locations owned by an Affiliate of Club. Club thereafter shall be responsible for all costs associated with storing the Terraplas.

7.5.3 Club will have the right to use the Terraplas for any Special Events that will use the playing field. In addition, Club will have the right to rent use of the Terraplas to third parties. If the third party uses the Terraplas for a Third Party Event, then the rental revenue will be included in the Additional Rent calculation defined in Section 5.2.3. If the third party uses the Terraplas outside the Ballpark, then Club will include the rental revenue in the Additional Rent calculation defined in Section 5.2.1.

7.5.4 Club will exercise commercially reasonable care in storing, setting up, removing, and cleaning the Terraplas. The City acknowledges that the Terraplas has a limited useful life and that, through ordinary wear and tear, likely will need to be replaced in due course. Neither the City nor Club shall be responsible to the other for repairing or replacing the Terraplas due to ordinary wear and tear or because the Terraplas has outlived its useful life.

7.5.5 City shall have the right to use the Terraplas with advanced notice to Club, subject to availability, at no cost to the City, except the City will be responsible for making any arrangements that are necessary to transport, set-up, break-down, clean, and return the Terraplas to Club's storage facility.

## ARTICLE VIII – MAINTENANCE AND REPAIRS

### 8.1 Club's Maintenance Responsibilities.

#### 8.1.1 Preventative Maintenance.

(a) Club shall be responsible for the implementation of a preventative maintenance program at Club's sole cost and expense. The preventative maintenance program performed by Club will include regular visual inspections of the Ballpark, including any alterations and improvements as described under Article 15 of this Lease Agreement, and its equipment and other preventative maintenance tasks that are customary and usual for professional baseball stadiums and for the type of equipment that is installed in the Ballpark. In Club's discretion, Club may enter into service contracts with third parties to perform some portions of or the entire preventative maintenance program. If Club engages third parties for this reason, such engagement shall not relieve Club of its liability to perform the preventative maintenance tasks. The Club acknowledges that the City intends to propose a preventative maintenance program that details tasks and frequencies of tasks to be implemented for the Ballpark in the form of a preventative maintenance plan. If the City proposes such a preventative maintenance plan, Club will accept the preventative maintenance plan unless Club has a reasonable basis to object to specific tasks or to the frequency required for specific tasks, which objection Club will communicate to the City within thirty (30) days of the date the City delivers the proposed preventative maintenance plan to Club. If Club objects to any portions of the City's proposed preventative maintenance plan, the City and Club will negotiate in good faith to resolve all such objections and thereby to adopt a modified version of the City's proposed preventative maintenance plan. If the City and Club are able to agree upon a preventative maintenance plan, Club will thereafter be required to abide by the preventative maintenance plan. If alterations or improvements are made to the Ballpark pursuant to Article 15 of this Lease Agreement, Club agrees to pay for the cost of updating or expanding the preventative maintenance plan to include such alterations or improvements. The City and Club agree to abide by the same good faith procedures described above to resolve objections there may be to the preventative maintenance plan covering alterations or improvements to the Ballpark.

(b) Club shall maintain records of the preventative maintenance inspections and work performed by Club for a period of time reasonably determined by the City based upon the City's disposition policy for similar records maintained by the City at other City facilities. Club shall make such records available to the City for inspection upon request, after the City provides a reasonable amount of notice to Club. Club also will make copies of such records for the City's use upon request, provided that the City will pay for the cost of such copies.

(c) At the City's request, Club and the City's General Services Department will conduct a monthly on-site meeting, unless the City's General Services Department and Club agree to a

different schedule, for the purpose of reviewing preventative maintenance plan tasks and routine maintenance tasks performed during the monthly period and of conferring on any facilities issues. The City may conduct a visual inspection of the Premises during the monthly meeting(s), or at some other pre-scheduled time. Upon request, Club shall provide copies of the records of inspections to the City at the City's cost. The City shall have the right to conduct periodic on-site audits and inspections of the all preventative maintenance plan records maintained by Club.

8.1.2 Routine Maintenance. In addition to, or as part of, performing the preventative maintenance program described in Section 8.1.1 above, Club shall be responsible for performing day-to-day routine maintenance responsibilities for the Ballpark at Club's sole cost and expense and in accordance with the Operating Standards. The parties acknowledge the difficulty of defining precisely the day-to day routine maintenance tasks covered by this paragraph; however, such tasks and responsibilities are the obligation of Club and shall be considered separate and distinct from Club's responsibility for the maintenance, repair, or replacement of the Capital Maintenance and Repair Items.

8.1.3 Capital Maintenance and Repairs Items. (a) Subject to Club's Annual Maintenance and Repairs Obligation, Club shall be responsible for the cost of maintaining, repairing, and replacing, if necessary, the Capital Maintenance and Repairs Items. Club shall perform all maintenance, repair and replacement of the Capital Maintenance and Repairs Items in accordance with the Operating Standards. Notwithstanding the foregoing, if the cost of maintaining, repairing, or replacing any Capital Maintenance and Repairs Item, including an Out-of Compliance Condition item as defined in Sections 8.2.2 and 8.2.3(a), would cost an amount that either individually or when added to previous qualified expenditures would cause Club's cost for Capital Maintenance and Repair Items to exceed Club's Annual Maintenance and Repairs Obligation, Club will not be responsible for the cost of maintaining, repairing, or replacing the Capital Maintenance and Repairs Item or the Out-of-Compliance Condition, but Club shall propose to the City a plan for combining Club funds in an amount equal to the balance remaining in Club's Annual Maintenance and Repairs Obligation, if any, with the City's funds and/or resources..

(b) The amount of Club's Annual Maintenance and Repairs Obligation for a given year will be the sum of the Annual Cap on Repairs and Maintenance for that year plus any unspent amount of Club's Annual Maintenance and Repairs Obligation from the previous years. Club's Annual Maintenance and Repairs Obligation for calendar year 2014 will be Two Hundred Thousand and No/100 Dollars (\$200,000.00). For example, if in 2014 Club spends \$150,000 on maintaining, repairing, or replacing Capital Maintenance and Repair Items, and if the Consumer Price Index increased during 2014 by three percent (3%), then Club's Annual Maintenance and Repairs Obligation for 2015 will be the sum of \$200,000 (the Annual Cap on Maintenance and Repairs amount during 2014), plus the Consumer Price Index increase of \$6,000 (which means the Annual Cap on Repairs and Maintenance for 2015 will be \$206,000), plus the \$50,000 savings from the first year, for a total of \$256,000; if, in 2015, Club spends \$210,000 on maintaining, repairing, or replacing Capital Maintenance and Repair Items, and if the Consumer Price Index increased during 2015 by three percent (3%), then the Club's Annual Maintenance and Repairs Obligation for 2016 will be \$206,000 (the Annual Cap on Maintenance and Repairs amount for 2015), plus the Consumer Price Index increase of \$6,180 (which means the Annual

Cap on Repairs and Maintenance for 2016 will be \$212,180), plus the \$46,000 savings from 2015, for a total of \$258,180.

(c) Club is entitled to charge expenditures it makes against Club's Annual Maintenance and Repairs Obligation only if such costs and expenditures are for Capital Maintenance and Repair Items. If Club elects to perform any maintenance, repairs, or replacement of Capital Maintenance and Repair Items with Club personnel, Club shall document to the City's reasonable satisfaction Club's calculation of such costs to Club, which shall be based upon a reasonable allocation of such personnel's time, wages, and benefits, plus any out of pockets costs Club incurs. If Club elects to perform any maintenance, repairs, or replacement of Capital Maintenance and Repair Items by engaging the services of an Affiliate of Club, Club shall document to the City's reasonable satisfaction the cost charged by the Affiliate of Club. If Club provides documentation acceptable to the City substantiating the calculation of estimated costs to Club for maintenance, repairs, or replacement of Capital Maintenance and Repair Items through self-performance or through an Affiliate as described in this Section 8.1.3(c), Club may charge against Club's Annual Maintenance and Repairs Obligation the lesser of (i) such calculated costs or (ii) the fair market value of the maintenance, repair, or replacement services as measured by what Club's cost would have been if Club had engaged the services of an independent contract that is not an Affiliate of Club in an arms-length transaction.

(d) Club shall have authority to maintain, repair, or replace Capital Maintenance and Repairs Items without receiving the City's approval, provided, however, Club shall comply with any applicable Legal Requirements, and Club shall give priority to maintain, repair, or replace those Capital Maintenance and Repairs Items that are specifically required in order to cure Out-of-Compliance Conditions as defined in Sections 8.2.2 or 8.2.3(a). If Club elects to replace a Capital Maintenance and Repair Item rather than repair it, Club may proceed without approval from the City if the replacement item is identical to the item to be replaced, or a more recent model of the item to be replaced; if Club desires to replace the item with one of different specifications, or to alter the design, the Club must seek the City's approval, which approval shall not be unreasonably withheld, conditioned, or delayed.

(e) Club will provide to the City on a quarterly basis a written report of what expenditures Club has made during that calendar year that Club has applied against Club's Annual Maintenance and Repairs Obligation and any expenditures of which Club is aware it likely will make during the same calendar year that once made will apply against Club's Annual Maintenance and Repairs Obligation. In addition, Club shall provide to the City by February 1 of each calendar year Club's calculation for Club's Annual Maintenance and Repairs Obligation for that calendar year, as determined in accordance with Section 8.1.3(b), and a Maintenance and Repairs Budget for the following Baseball Season, including the projected total amount of expenditures, giving priority to those Capital Maintenance and Repairs Items that are specifically required in order to cure Out-of-Compliance Conditions. The City acknowledges that any such projections contained in the Maintenance and Repairs Budget will not limit what Club may charge against Club's Annual Maintenance and Repairs Obligation, although Club will give priority to correcting any Out-of-Compliance Conditions.

8.1.4 Other Limitations on Club's Responsibility. Notwithstanding the foregoing, under no circumstances will Club be responsible for repairing or replacing structural components of the Ballpark not included in Exhibit B, for replacing the HVAC chiller units when such units have outlived their useful lives, for replacing the roof, or for repairing or replacing the concrete of the seating bowl or of the grandstand structure.

8.2 City's Maintenance Responsibilities.

8.2.1 The City shall be responsible for all maintenance, repairs, and replacements that are not the responsibility of Club.

8.2.2 Compliance with Legal Requirements. The City shall be responsible for keeping the Ballpark in compliance with all Legal Requirements. If the City receives written notice from a federal, state, or local agency that finds the Ballpark to be out of compliance with any Legal Requirements, the City shall provide a copy of such written notice to Club. If the portion of the Ballpark that is found to be out of compliance with Legal Requirements is a Capital Maintenance and Repair Item, the City shall have the right to designate such item an "Out-of-Compliance Condition."

8.2.3 Compliance with Facility Standards. (a) The City shall be responsible for keeping the Ballpark in compliance with the Facility Standards. The City and Club acknowledge that the National Association on occasion conducts inspections of facilities and issues a report concerning whether a facility complies with the Facility Standards. Club shall provide to the City a copy of any such report. In the event the National Association or any other responsible party finds the Ballpark to be out of compliance with the Facility Standards, Club shall provide written notice to the City of any such finding(s). If the portion of the Ballpark that is found to be out of compliance with the Facility Standards is a Capital Maintenance and Repair Item, then any such condition shall be considered an "Out-of-Compliance Condition."

(b) If the Out-of-Compliance Conditions can be corrected with funds remaining in Club's Annual Maintenance and Repairs Obligation, Club shall make curing the Out-of-Compliance Condition a priority for use of the funds in Club's Annual Maintenance and Repairs Obligation and will be responsible for correcting the Out-of-Compliance Condition. If, however, the Out-of-Compliance Condition is not a Capital Maintenance and Repairs Item, Club may request that the City make any modifications necessary to correct the Out-of-Compliance Condition. If, however, the Out-of-Compliance Condition is a Capital Maintenance and Repairs Item but there are insufficient funds available in Club's Annual Maintenance and Repairs Obligation to correct the Out-of-Compliance Condition, Club shall propose to the City a plan for combining Club funds in an amount equal to the balance remaining in Club's Annual Maintenance and Repairs Obligation, if any, with the City's funds and/or resources to correct the Out-of-Compliance Condition. Notwithstanding the foregoing, Club represents and warrants to the City that it is not aware of any areas in which the Ballpark is, as of the date of this Agreement, not in compliance with the Facility Standards, except that the level of field lighting is not adequate for Triple-A baseball, which the Parties anticipate will be cured as a part of the projects described in Section 15.3.



(c) In the event the National Association adopts new Facility Standards after the date of this Agreement, and the new Facility Standards causes the Ballpark to be out of compliance with the Facility Standards, Club shall have the right to request the City to make any modifications that are necessary to bring the Ballpark into compliance with the new Facility Standards, subject to paragraph 8.2.3(b). If the City declines to make such alterations and improvements, then Club shall apply to the National Association or Major Leagues, as applicable, using best efforts to obtain a waiver, exemption or variance from such new standards. Club shall inform the City, in writing, of the determination by the National Association or the Major Leagues on the waiver, exemption or variance application. If: (a) the waiver, exemption, or variance application is denied; and (b) the City thereafter again determines not to make such alterations and improvements; and (c) the continued use by Club of the Ballpark, without such alterations and improvements, would result in loss of Club's professional baseball franchise or player development contract, or some other substantial and material penalty, then Club shall be entitled to terminate this Agreement on at least twelve (12) months' prior written notice to the City unless the National Association requires Club to terminate Club Home Games in the Ballpark sooner than twelve (12) months in which case the effective date of the termination shall be the date mandated by the National Association. After Club provides such notice to the City, Club will have the right to continue to play Club Home Games in the Ballpark on the same terms and conditions provided in this Agreement until such time as Club relocates the franchise to another facility.

8.3 Self-Help. In the event the City or Club, as applicable, fails to maintain or repair all or any of the portion of the Ballpark or furnishings, fixtures and equipment in or on the Ballpark as otherwise required by this Agreement, the other party shall be entitled, in the discretion of such party, to undertake such maintenance or repairs and be reimbursed by the responsible party in an amount equal to the reasonable costs incurred, including out-of-pocket and labor costs, if any. The right of self-help of the City or Club, as applicable, as to the collection of trash and debris shall be exercisable immediately upon the failure of the responsible party to collect such trash and debris in a timely manner as provided in this Agreement. The right of self-help of the City or Club, as applicable, as to any maintenance or repairs shall be contingent upon the failure of the responsible party to complete the maintenance or repairs within ten (10) business days after receiving written notice from the other party of the existence of the condition requiring maintenance or repairs and of the intention of the other party to exercise the right of self-help, unless the maintenance or repairs are of a nature that ten (10) business days are not sufficient time in which to reasonably complete the maintenance or repairs. If ten (10) business days are not sufficient time, the party seeking to exercise the right of self-help may nonetheless undertake such action unless the responsible party initiates maintenance or repair efforts within the ten (10) business day period and thereafter diligently carries out to completion the required maintenance or repairs. Notwithstanding anything in this Agreement which may be to the contrary, a party determining in the discretion of such party to exercise the self-help provisions of this Section shall, upon reimbursement for reasonable costs incurred, be entitled to no other remedy arising from the failure of the City or Club, as applicable, to perform the maintenance or repairs required by this Agreement. A condition precedent to exercise of the right of self-help by Club shall be compliance by Club with all procurement and other requirements to which the City is subject in the expenditure of public funds including, but not limited to, Article 8 of Chapter 143 of the General Statutes of North Carolina and Sections 84 through 85 of the Charter of the City.

## ARTICLE 9 - NAMING RIGHTS; THE BULL

9.1 Name of Team. Club shall use the sole geographic designation of "Durham" for the name of Club's baseball team playing at the Ballpark unless the City, in its sole discretion, agrees to permit Club to change this designation. Club acknowledges and recognizes the longstanding attachment of the City and public to the "Bulls" nickname of Club's baseball team; however, this Agreement does not preclude Club from changing that nickname.

9.2 Name of Ballpark. The name of the Ballpark will be "Durham Bulls Athletic Park" during the Term. The City shall be entitled to use, and allow other persons to use, the names 'Durham Bulls Athletic Park' and 'Bulls Athletic Park' in publicizing and marketing the Ballpark and the City and in promoting, marketing and selling goods and services that include the name of the Ballpark without the payment of compensation to Club. The City shall be entitled to use and market, and allow other persons to use and market, goods, products and other items which contain the name "Durham Bulls Athletic Park" without the payment of any licensing fees or other compensation to Club.

9.3 Ownership of the Bull. The Club shall retain ownership of the Bull, including the likeness of the Bull; provided, however, that the City shall be entitled to use, and allow other persons to use, the likeness of the Bull in publicizing and marketing the Ballpark and the City without the payment of compensation to Club.

## ARTICLE 10 - BROADCASTING

10.1 Broadcasting. Club shall have the exclusive right to Broadcast Club Home Games and Special Events involving professional baseball players and any Special Event promoted or staged by Club at the Ballpark. Club shall exercise such right at the times and in the manner Club considers appropriate.

10.2 Broadcast Improvements. Club may, at Club expense, design and install, or cause to be designed and installed, Improvements to provide for efficient and convenient Broadcasting from the Ballpark (hereinafter the "Broadcast Improvements"). If the Broadcast Improvements upon completion will be visible to the general public, the City shall have the right to approve any Broadcast Improvements, which approval shall not be unreasonably conditioned, withheld, or delayed. Club shall be responsible for repair and maintenance of the Broadcast Improvements. Club shall have the exclusive right to use or provide for use of the Broadcast Improvements. Any revenues received by Club from use or providing for use of the Broadcast Improvements shall not be included in Gross Revenues pursuant to this Agreement.

## ARTICLE 11 - CONCESSIONS

11.1 Exclusive Concessions Rights. Club shall have the exclusive right to operate and sell Concessions on the Premises. Club shall bear all expenses associated with Club's operation and sale of Concessions.

## 11.2 Engagement of Sub-concessionaire.

11.2.1 Club shall be entitled to engage one or more qualified and reputable sub-concessionaires to assist Club in providing Concessions. If Club engages any such sub-concessionaires, Club shall be and remain fully responsible to the City for the operation and provision of Concessions to the same extent as if Club provided Concessions directly without the use of the sub-concessionaire.

## 11.3 Concessions Requirements and Performance Standards.

11.3.1 Club shall order, maintain and furnish Concessions so as to provide adequate, efficient and first-class levels of service to persons attending events in the Ballpark.

11.3.2 Club shall apply for and take any necessary steps to procure and maintain all licenses and permits required for Club's operation and sale of Concessions. Without limiting the generality of the foregoing, Club shall obtain a permit from the Durham County Health Department for all areas of the Ballpark subject to inspection by such department in connection with the provision of Concessions by Club. Club shall thereafter use best efforts to maintain at all times a Grade A sanitation rating for all such areas.

11.3.3 Club shall operate and maintain all Concessions areas (including the commissary), equipment, machinery, fixtures and facilities in a neat, clean, sanitary and safe condition.

11.3.4 Club shall provide fresh, sanitary and wholesome food and beverages meeting an excellent standard of quality and purity.

11.3.5 Club shall properly, promptly and courteously process and endeavor to resolve all claims, problems and complaints arising from the provision of Concessions.

11.4 Prohibition Against Bringing Food and Beverages into the Premises. Either the City or Club shall post a notice at each entrance to the Ballpark prohibiting any person from bringing food or beverages into the Ballpark or onto the Premises at any time unless Club in its sole discretion consents. Club and the City shall work cooperatively with each other to develop and implement necessary and appropriate procedures to enforce such prohibition.

## ARTICLE 12 - PARKING

### 12.1 Level of Parking.

12.1.1 The City acknowledges that the availability of not less than 2,500 Parking Spaces is a matter of substantial inducement for Club to enter into this Agreement. Should the number of Parking Spaces during the Term be reduced to less than 2,500 and Club thereafter: (a) reasonably determines that the remaining number of Parking Spaces is inadequate for members of the public attending Club Home Games and (b) provides the City with written notice of such determination; then the City shall have thirty (30) days from such notice to increase the number of Public Parking Spaces so that the total number of Parking Spaces is not less than 2,500 (provided, however, that if increasing

the number of Public Parking Spaces requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature reasonably be performed, done or removed, as the case may be, within such thirty-day period, then the City shall commence action within such period to increase the number of Public Parking Spaces and shall diligently prosecute the same to completion). Before making its determination under subsection 12.1(a) above, Club shall be required to consider that any Parking Spaces that exist in parking facilities owned, managed or otherwise controlled by any Affiliate of the Club, shall be considered at all times as available Parking Spaces for purposes of this Section 12.1.

12.1.2 Handicapped Parking. (a) To the extent Legal Requirements address the number and location of handicapped parking for the Ballpark or events to be held in the Ballpark, the City will be responsible for providing the facilities necessary to comply with the Legal Requirements.

(b) The Parties acknowledge the absence of any parking facilities available for use by Club or Club's patrons that are located on the Ballpark Real Property. The parties further acknowledge that since the Ballpark was placed in service in 1995, the Bulls have used the on-street parking facilities located on Blackwell Street, between Jackie Robinson Drive and Vivian Street, for use by persons with handicapped parking permits and other persons, if spaces are available. The Bulls acknowledge that the City has applicable ordinances in place governing the permitting of temporary street closures for special events. In the event the City or Durham Police Department exercises its discretion in the future and elects to terminate, restrict or modify the closure or Club's use of Blackwell Street in a manner that adversely affects parking management for Club's Home Games or Other Events, Club will be entitled to request that the City provide to Club a plan that provides adequate handicapped parking based upon the number of persons that can be expected to attend Club Home Games or Other Events that have handicapped parking permits.

## ARTICLE 13 – ADVERTISING, SPONSORSHIPS, AND SIGNAGE

13.1 Advertising and Sponsorships. For all Club Home Games and for Special Events, Club shall have the exclusive right to sell and display advertising and sponsorship signage in and about the Ballpark and about the Premises. Club also shall have the exclusive right to sell all program and publication advertising for Club Home Games and Special Events. Club shall bear all expenses associated with advertising and sponsorships sold and displayed by or on behalf of Club including, without limitation, the cost of erection, maintenance, repair and replacement of all advertising and sponsorship signs and devices. Club shall have the right to install advertising and sponsorship signage throughout the Ballpark, provided, however, that all advertising and sponsorship signage sold or displayed shall be in good taste and consistent with the industry standards of minor league baseball and the goals of the City and Club to provide wholesome family entertainment through Club Home Games and Other Events held at the Ballpark.

13.2 Electronic Signs. Club shall have the right to install one or more electronic signs in the Ballpark. On the termination or expiration of this Agreement, Club may remove the electronic signs furnished by Club if this can be accomplished without any damage or injury to the Premises.

Otherwise, the electronic sign(s) furnished by Club shall become the property of the City on the termination or expiration of this Agreement.

#### ARTICLE 14 - SECURITY

14.1 Club Responsibility. For all Club Home Games and Special Events, and other Club activities at the Ballpark permitted by this Agreement, Club shall, at Club expense, provide such security personnel and traffic control both on the Premises and inside the Ballpark as are necessary to maintain order and protect the Premises and the safety of players, officials, spectators and customers. The City may supplement such personnel with City law enforcement officers, in the sole discretion and at the sole expense of the City. At all times during the Term, Club shall be responsible for security in Club administrative offices, retail areas, Concessions areas, Club storage areas, and any portions of the Premises exclusively occupied by Club.

14.2 City Responsibility. For all Club Home Games and Other Events, the City shall be responsible for security and traffic control outside of the Premises. Club may supplement City security and traffic control personnel with properly trained Club security traffic control personnel at Club expense and with the prior written consent of the City.

#### ARTICLE 15 - ALTERATIONS AND IMPROVEMENTS

15.1 By City. The City reserves the right, at City expense, to make alterations and improvements to the Premises; provided, however, that alterations or improvements that materially affect Club's use and occupancy of the Ballpark shall be subject to the prior written approval of Club, which shall not be unreasonably withheld, conditioned, or delayed.

15.2 By Club. In addition to Club's right to make improvements or alterations pursuant to Section 7.4 of this Agreement, Club may make material alterations and improvements to the Premises with the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned, or delayed. In the absence of such approval and agreement, Club shall make no material alterations or improvements to the Premises. During the Term of this Agreement, Club shall be responsible for the maintenance, repair, or replacement of such material alterations or improvements and shall account for such alterations or improvements in accordance with paragraph 25.5, Taxes and Encumbrances below. On the termination or expiration of this Agreement, Club may remove alterations and improvements made by Club at Club's sole expense if this can be accomplished without any damage or injury to the Premises. Otherwise, all such alterations and improvements shall become the sole property of the City on the termination or expiration of this Agreement.

15.3 Deferred Maintenance and Improvements Projects. Contemporaneously with the execution of this Agreement, the City and Club will execute the Development Agreement, which, among other things, describes a redevelopment and renovation construction project for the Ballpark. Part of the consideration that each party has provided to the other for this Agreement is the other party's obligations as defined in the Development Agreement. If either party breaches the terms of the Development Agreement, which is incorporated by reference, the other party shall be entitled to treat the

material breach of the Development Agreement as an Event of Default under this Agreement.

15.4 Central Trash and Recycling Facility. The City will have the right to dispose of trash and recycling from the Durham Performing Arts Center (“DPAC”) in the Ballpark trash and recycling facilities. If the City elects to dispose of the DPAC trash and recycling in the Ballpark trash and recycling facilities, Club will be responsible for disposing of the DPAC trash and recycling, and the City will pay to Club Ten Thousand and No/100 Dollars (\$10,000.00) per year, which amount will increase or decrease each year by CPI, subject to a cap of three percent (3%) per year. The City will have the right to assign its right to dispose of the DPAC trash and recycling in the Ballpark trash and recycling facilities to any operator of the DPAC, provided, however, the City shall remain responsible to Club for any such payment. If the City assigns this right to the DPAC operator, Club will invoice the DPAC operator at the beginning of each Baseball Season for one annual payment requiring the DPAC operator to pay the invoice amount within thirty (30) days of the date it receives the invoice. If the DPAC operator fails to make payment of the trash and recycling fees on the date when such payment is due, Club may hold the DPAC operator liable for late fees in an amount equal to the Prime Rate plus five percent (5%) per year. If the DPAC operator fails to make timely payment, Club will be entitled to receive payment from the City.

## ARTICLE 16 - FINANCIAL REPORTS AND RECORDS

16.1 Annual Statements. As soon as practicable after the end of each calendar year occurring during the Term, and, in any event, by May 1, Club shall furnish to the City a Schedule of Additional Rent. This Schedule of Additional Rent shall include the amount of each component of Gross Revenues, Additional Rent, and any Non-Arms-Length Transactions with respect to any of the foregoing (including the effect of such Non-Arms-Length Transactions on Gross Revenues and Additional Rent). On or before May 1 of each year, Club shall: (a) cause an independent certified public accountant selected by Club to audit and examine the most recent Schedule of Additional Rent furnished and selected by Club; and (b) deliver to the City an audit opinion of the Schedule of Additional Rent. If the accountant's opinion reveals that the Schedule of Additional Rent furnished by Club contained an understatement in the amount of Additional Rent paid by Club, then Club shall pay such additional amount at the time Club provides the audit opinion to the City.

16.2 City Inspection and Audit. The City has the right from time to time during regular business hours, upon fifteen (15) days' written notice, to inspect and audit Club's books and records relating to the Schedule of Additional Rent, Club's Annual Maintenance and Repairs Obligation, Club's preventative maintenance efforts and expenditures (as described under Section 8.1.1), and expenditures on Capital Maintenance and Repairs Items. Club shall maintain Club's books and records relating to the Schedule of Additional Rent, Club's Annual Maintenance and Repairs Obligation, and expenditures on Capital Maintenance and Repairs Items for three (3) years. Club shall include, in each license, concession or other agreement with any person doing business with Club with respect to any component of Gross Revenues, Additional Rent, and any Non-Arms-Length transactions with respect thereto, a provision giving the City the same rights of inspection and audit as the City has with Club.

16.3 Survival. The provisions of Article 16 shall survive the termination or expiration of this Agreement.

## ARTICLE 17 – CLUB’S EXCLUSIVITY IN PROFESSIONAL BASEBALL

17.1 Durham Athletic Park. To the extent permitted by applicable law, the City agrees that during the Term, the City shall not lease Durham Athletic Park or allow others to use Durham Athletic Park to play one or more Professional Baseball Games. The City makes no covenant, warranty or representation as to whether applicable law permits such agreement. The restriction contained in this Section shall not preclude the City from leasing or permitting use of the Durham Athletic Park: (a) for professional softball exhibitions and games; or (b) unless prohibited by a rule of the Major Leagues, for exhibition baseball games including retired Major League or minor league players, where such games are held on days other than a Club Home Game.

## ARTICLE 18 – TICKET SURCHARGE AND OTHER TAXES

18.1 Ticket Tax or Sales Tax on Tickets Levied by City. The City and Club acknowledge the desirability of providing reasonably priced entertainment to members of the public in the Ballpark. The City further acknowledges Club’s willingness to assume additional responsibilities for operational costs and the costs of maintenance and repairs and to pay the amount of Base Rent and Additional Rent required by this Agreement is in part based upon Club’s assumption that, if given the authority, the City will not levy or assess a ticket surcharge on the sale of tickets to Club Home Games and Other Events. If the City is given the power to levy or assess taxes on the sale of tickets, and it chooses to levy or assess a ticket tax or surcharge or any sales tax or other tax on the sale of tickets or the price of admission, the City acknowledges and agrees that the effect of such a tax or levy may be to the detriment of Club’s operations and the Ballpark. Therefore, the City agrees that under such circumstances the City will negotiate in good faith with Club with the objective of executing an amendment to this Agreement that adjusts the financial terms of this Agreement in a manner that will offset the detrimental financial impact to Club of the ticket tax or surcharge or sales tax paid by Club until the parties are restored to their relative economic positions as contemplated by this Agreement. If during the Term, the City assesses a ticket surcharge or any sales tax on the sale of tickets or admission to Club Home Games or Other Events, the City agrees that Club shall be entitled to reduce Base Rent and Additional Rent to be paid by Club pursuant to Article 5 to the greater of zero or the amount derived by subtracting from the amount of Additional Rent that would have been due in any given year by the amount of ticket surcharge or sales tax on the sale of tickets or admission collected by the City in the same year until such time that the amendment is executed. If the amount of Base Rent and Additional Rent in a given year is insufficient to offset the amount the City receives from a ticket tax or surcharge or from any other sales tax on the sale of tickets or admission in that year, then Club will be entitled to reduce the Annual Cap on Maintenance and Repairs in future years until such time as Club has offset all amounts received by the City.

18.2 Ad Valorem Taxes. In the event Club is assessed ad valorem taxes on its leasehold interest in the Ballpark and the Premises, and if the City receives all or a portion of the ad valorem taxes paid by Club, the City and Club will negotiate in good faith an amendment to this Agreement that will offset the financial impact to Club of that portion of the ad valorem taxes paid by Club that the City collects by providing to Club financial concessions that would be of equivalent value.

## ARTICLE 19 – INSURANCE

19.1 By Club. At all times during the Term, Club shall, at Club expense, procure and thereafter maintain the insurance specified in this Article with insurance companies acceptable to the City and authorized to do business in the State of North Carolina. The terms, conditions and amount of all such insurance shall be subject to the prior review and approval of the Risk Manager. A copy of each such policy, together with a receipt and certificate of insurance indicating payment by Club of the insurance premium on the policy, shall be promptly submitted to the Risk Manager. In the event of a loss which may be covered by any policy of insurance, Club shall submit to the Risk Manager a copy of the proof of claim at the time Club submits the claim to the insurance carrier. All such insurance shall contain an endorsement giving the City not less than thirty (30) days' prior written notice of any cancellation and, with the exception of workers' compensation insurance, shall include the City as an additional insured. Without limiting the generality of the foregoing:

(a) Workers' Compensation Insurance. Club shall procure and maintain workers' compensation insurance providing statutory benefits.

(b) Liability Insurance. Club shall procure and maintain comprehensive general liability insurance, including but not limited to the following coverage parts: premises/operations; products and completed operations; independent contractors; broad form property damage; host liquor liability; and personal injury, including coverage for false arrest, false imprisonment, malicious prosecution, libel, slander, defamation and advertising. Such insurance shall contain limits approved from time to time by the Risk Manager but in no event less than a combined single limit of One Million Dollars (\$1,000,000) per person and Five Million Dollars (\$5,000,000) per accident for bodily injury and property damage liability, Five Hundred Thousand Dollars (\$500,000) per person for personal injury, and Five Thousand Dollars (\$5,000) per person for medical payments coverage. The City shall be named as an additional insured. Primary, excess, and umbrella policies may be used to obtain these coverage limits. As to those comprehensive general liability insurance coverage parts for independent contractors and host liquor liability, Club may cause its independent contractors to procure and maintain such coverage on behalf of Club and the City.

(c) Other Insurance. At the City's request, Club shall procure and maintain such other insurance that is or may become customary or available for protection against claims, liabilities and losses connected with Club's use or occupancy of the Premises.

19.2 By City. Except as otherwise provided by Section 19.3, the City shall at all times during the Term, at City expense, procure and thereafter maintain a policy or policies of fire and extended coverage insurance on the Ballpark, and other City-owned insurable facilities located on the Premises and having replacement values in excess of Fifty Thousand Dollars (\$50,000). Such insurance shall be on a replacement cost basis, and with insurance companies authorized to do business in the State of North Carolina. A copy of each such policy, together with a receipt and certificate of insurance indicating payment by the City of the insurance premium on the policy, shall be



promptly submitted to Club. All such insurance shall contain an endorsement giving Club not less than thirty (30) days' prior written notice of any cancellation. The City shall not be required to insure any personal property of Club.

19.3 City Risk Retention Program. In lieu of the insurance otherwise required pursuant to Section 19.2, the City may utilize an alternative risk management, risk retention or self-insurance program for the Ballpark. Such program shall be bona fide and funded in a financially sound manner so as to constitute reasonable and appropriate risk management by the City. Such program may be individually established by the City or part of a mutual or collective program with other units of local government, other institutions or captive insurance companies. Should the City determine to utilize any such program for the Ballpark, then on an annual basis during the period such program is being utilized, the City shall provide to Club documentation, reasonably satisfactory to Club, of compliance by the City with the provisions of this Section.

## ARTICLE 20 - INDEMNIFICATION

20.1 Obligation to Indemnify. To the fullest extent permitted by law, Club shall indemnify and save harmless the City and the City's officers, employees, agents and contractors (hereinafter the "Indemnitees") against and from all liabilities, suits, obligations, fines, damages, penalties, losses, claims, costs, charges and expenses, including, without limitation, attorneys' fees and disbursements (hereinafter collectively referred to as "Charges"), which may be imposed upon or asserted against or reasonably incurred by the Indemnitees arising as a result of or in connection with the acts or omissions of Club or Club's officers, employees, players, agents, assigns, sublessees, concessionaires, sub-concessionaires, licensees and guests (other than members of the public attending, as a spectator, or Club Home Games or Special Events) (hereinafter the "Indemnitors"); provided, however, that this obligation shall not extend to Charges which may be imposed upon or asserted against or reasonably incurred by the Indemnitees arising as a result of or in connection with the acts or omissions of the Indemnitees. Without limiting the generality of the foregoing, but subject to the limitations on Club's obligations as provided in the foregoing, this indemnity shall include, but is not limited to:

(a) Operation. Any act or omission of any Indemnitors pertaining to any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises;

(b) Injury. Any accident, injury (including death) or damage to any person or property occurring in, on or about the Premises as a result of the acts or omissions of any Indemnitors;

(c) Private Property Damage. Any claims or liabilities for loss or theft of, or damage to, any property located on the Premises of any of the following as a result of the acts or omissions of any Indemnitors: Indemnitors, employees and players of other teams playing Club Home Games or Special Events, umpires, and members of the public or any other person attending Club Home Games or Special Events;

(d) Liens. Any lien or claim which may be alleged to have arisen against or on the Premises or the leasehold interest of Club as a result of the act or omissions of any Indemnitors;

(e) Sublease. Any and all liabilities, claims, and causes of action arising under the provisions of any occupancy, sublease, assignments, service contracts or other agreements of any Indemnitors affecting or relating to the Premises;

(f) Indemnitor Default. Any failure on the part of any Indemnitors to keep, observe and perform any of the provisions of any agreements by the Indemnitors affecting the Premises; and

(g) Rental. Any failure on the part of the Indemnitors to pay rent or to keep, observe, perform or comply with any provision in this Agreement, and the exercise by the City of any remedy provided in this Agreement with respect to such failure.

20.2 Club's Obligation to Defend. If any claim, action or proceeding is made or brought against any Indemnatee by reason of any event as to which Club is required to indemnify any Indemnatee pursuant to this Article 20, then, upon demand by such Indemnatee, Club, at its sole cost and expense, shall resist or defend such claim, action or proceeding in such Indemnatee's name, if necessary, by the attorneys for Club's insurance carrier (if such claim, action or proceeding is covered by insurance), and otherwise by such attorneys as the City and Club shall mutually approve. The City agrees that in the event the City is named as a party to an action, the City will reasonably cooperate with Club in the conduct of the proceedings.

20.3 Survival. The provisions of this Article shall survive the termination or expiration of this Agreement.

## ARTICLE 21 - CASUALTY LOSS; CONDEMNATION

21.1 Casualty Loss. If the Ballpark shall be partially or totally damaged or destroyed by fire or other casualty, the City, at City expense, shall repair the damage out of the proceeds of insurance under Section 19.2 or alternatively, if the City has determined to utilize a risk management, risk retention or self-insurance program under Section 19.3 rather than obtain the insurance policy or policies under Section 19.2, the proceeds of the program under Section 19.3. The City shall use such proceeds to restore the Ballpark so much as such proceeds allow to substantially the condition existing immediately prior to such fire or other casualty. In undertaking any such work of repair and restoration, the City shall proceed promptly and diligently to completion, subject to reasonable delays beyond the City's control.

21.2 Rent Adjustment During Repair Period. During any period beginning with the occurrence of any damage or destruction by fire or other casualty which renders the Ballpark unfit or unusable for Club Home Games and ending upon completion of the work or repair and restoration:

(a) The rent payable under this Agreement shall temporarily abate;

(b) Club shall pay a reasonable rent for any part of the Premises which Club elects to use during such period;

(c) Club, in its sole discretion, will be entitled to use Durham Athletic Park for any Club Home Games that it is unable to stage in the Ballpark and, under such circumstances, Club shall pay the Additional Rent required by Article 5; and

(d) The other obligations of the City and Club under this Agreement shall be suspended to the extent appropriate in the light of the extent of the fire or casualty and the remaining part, if any, of the Premises being used by Club.

21.3 Condemnation. In the event that all or any material portion of the Ballpark is taken by the exercise of the right of eminent domain exercised by a governmental entity or pursuant to any other governmental order and such taking renders the Ballpark unfit or unusable for Club Home Games, then this Agreement shall terminate and expire on the date of such taking. In such event, Club shall pay rent for the period of time up until the date of taking; any obligation of Club to pay rent for use of the Ballpark for the period of time commencing as of the date of taking shall cease. Club shall have no right to any portion of any award granted with respect to such taking, except that Club shall have the independent right to make a claim, to the extent such claim may be then allowed by applicable law, against the condemnor for and retain any award based on the reasonable value of any improvements made to the Ballpark by Club and for the expenses incidental to relocating from the Ballpark. For purposes of this Section, the "date of taking" means the date title to the Ballpark or the material portion taken is permanently vested in such governmental entity.

## ARTICLE 22 - EVENTS OF DEFAULT

22.1 By Club. Each of the following events shall constitute an Event of Default under this Agreement:

(a) if Club shall fail to pay any installment of Base Rent or Additional Rent and such failure shall continue for ten (10) days after written notice from the City to Club, other than any portions of Additional Rent subject to a good faith dispute between the City and Club during the pendency of such dispute;

(b) if Club shall fail to make any other payment required to be paid by Club under this Agreement for a period of fifteen (15) days after written notice from the City to Club specifying such failure, other than any portions of such payment subject to a good faith dispute between the City and Club during the pendency of such dispute;

(c) if there is an understatement of Additional Rent or other sums due from Club to the City due to an intentional discrepancy by Club;

(d) if Club shall fail to observe or perform one or more of the other provisions of this Agreement or any representation of Club set forth in this Agreement, and such failure or misrepresentation shall continue for a period of thirty (30) days after written notice by the City to Club specifying such failure (unless such failure or misrepresentation requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature reasonably be performed, done or removed, as the case may be, within such thirty day period, in which case no Event of Default shall be deemed to exist as long as Club shall have commenced curing the same within such thirty-day period and shall diligently and continuously prosecute the same to completion);

(e) if Club shall admit, in writing, that it is unable to pay its debts as such become due or shall make an assignment for the benefit of creditors;

(f) if Club shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the

present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute or law, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Club or of all or any substantial part of its properties or of any interest of Club in the Premises;

(g) if within ninety (90) days after the commencement of any proceeding against Club seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed, or if, within ninety (90) days after the appointment of any trustee, receiver or liquidator of Club or of all or any substantial part of its properties or of any interest of Club in the Premises, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within thirty (30) days after the expiration of any such stay, such appointment shall not have been vacated;

(h) if Club shall abandon the Premises and such abandonment shall continue for a period of fifteen (15) days;

(i) if this Agreement or the estate of Club hereunder shall be assigned, leased, transferred, or encumbered without an approval of the City required by this Agreement or without compliance with the applicable provisions of this Agreement;

(j) if a levy under execution or attachment shall be made against Club or its property and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of ninety (90) days; or

(k) if Club commits an event of default under the Development Agreement and fails to cure such event of default as provided in the Development Agreement.

22.2 By City. It shall constitute an Event of Default under this Agreement if the City shall fail to observe or perform one or more of the provisions of this Agreement or any representation of the City set forth in this Agreement, and such failure or misrepresentation shall continue for a period of thirty (30) days after written notice by Club to the City specifying such failure (unless such failure or misrepresentation requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature reasonably be performed, done or removed, as the case may be, within such thirty-day period, in which case no Event of Default shall be deemed to exist as long as the City shall have commenced curing the same within such thirty-day period and shall diligently prosecute the same to completion). Additionally, it shall constitute an Event of Default under this Agreement if the City commits an event of default under the Development Agreement and fails to cure such event of default as provided in the Development Agreement.

22.3 Guarantor's Right Following An Event of Default by Club. If an Event of Default by Club shall occur and the City gives written notice to Club terminating the Agreement as provided in Section 22.4, the City shall provide the Guarantor with a copy of such written notice. The Guarantor shall be entitled to perform the obligations of Club giving rise to the Event of Default. The Guarantor shall have a period of twenty (20) days after such notice within which to complete such performance (unless the same requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature reasonably be performed, done or removed, as the case may be, within such twenty-day period, in which case the Guarantor may have such additional period of time as may be necessary to effectuate such performance by diligently prosecuting the same to completion, but in any event not longer than 12 months). During such period of time, the City shall have all rights and remedies against Club pursuant to this Agreement. Upon such performance, the City,

Club and Guarantor agree that the Guarantor shall be entitled, in the discretion of the Guarantor, to assume all rights and obligations of Club pursuant to this Agreement.

22.4 Termination of Agreement in Event of Default by Club. If an Event of Default by Club shall occur, the City, at any time thereafter, at its option, may give written notice to Club stating that this Agreement shall expire and terminate on the date specified in such notice, which date shall be not less than thirty (30) days after the giving of such notice with respect to any Event of Default. Thereafter, subject to the rights of the Guarantor as provided in Section 22.3, this Agreement and all rights of Club under this Agreement shall expire and terminate on the date specified in the notice as if that date were the date definitely fixed in this Agreement for the expiration of the Term, and Club shall immediately quit and surrender the Premises. Following such surrender of the Premises, Club shall remain liable to the City for damages to the City resulting from the Event of Default.

22.5 Re-entry by City on Termination. If this Agreement shall be terminated as provided in this Article 22 or by summary proceedings, or otherwise; the City may re-enter and repossess the Premises pursuant to applicable law.

22.6 No Reinstatement of Term. No receipt of moneys by the City from Club after termination of this Agreement, or after the giving of any notice of termination of this Agreement (unless such receipt is before the termination date set forth in the notice and cures the Event of Default which was the basis for the notice), shall reinstate, continue or extend the Term or affect any notice previously given to Club or operate as a waiver of the right of the City to recover possession of the Premises.

22.7 Alternate Remedies of City. In the event of any Event of Default or threatened breach of any of the provisions of this Agreement, the City shall have the right to invoke any rights and remedies allowed at law or in equity (including specific performance) or by statute or otherwise.

22.8 Alternate Remedies of Club. In the event of any Event of Default or threatened breach of any of the provisions of this Agreement, Club shall have the right to invoke any rights and remedies allowed at law or in equity (including specific performance) or by statute or otherwise.

22.9 Rights and Remedies are Cumulative. Each right and remedy of the City and Club provided for in this Agreement shall be cumulative and not exclusive and shall be in addition to every other right or remedy provided for in this Agreement or now or hereafter existing at law or in equity (including specific performance) or by statute or otherwise. The exercise or beginning of the exercise by the City or Club of any one or more of the rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the City or Club of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise.

22.10 City Protection for Club Bankruptcy. If an order for relief is entered or if a stay of proceeding or other act becomes effective in favor of Club or Club's interest in this Agreement in any proceeding which is commenced by or against Club under the present or any future federal Bankruptcy Code or any other present or future applicable federal, state or other statute or law, the City shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy code, statute, law or this Agreement, including, without limitation, such rights and remedies as may be necessary to adequately assure the complete and continuous future performance of Club's obligations under this Agreement.

## ARTICLE 23 - TRANSFER OF CLUB'S INTEREST

23.1 Club Right of Assignment. Club shall be entitled to assign this Agreement to any third party approved by the National Association and the Major Leagues as a transferee of Club's franchise, so long as such prospective new owner: (a) agrees to assume all of the rights and obligations of Club under this Agreement, (b) demonstrates to the reasonable satisfaction of the City that it is financially capable of assuming all of the rights and obligations of this Agreement, and (iii) demonstrates to the reasonable satisfaction of the City that it is not a Prohibited Person. If the National Association and the Major Leagues include as a part of their approval process that the prospective new owner must satisfy financial requirements as determined by the National Association and the Major League, and if the new owner satisfies those requirements, then the prospective new owner need not make the financial showing anticipated by subsection (b) of this Section. Other than as set forth in this Section, Club shall not be entitled to assign this Agreement without the express written consent of the City, which may be withheld for any reason. No assignment shall in any way relieve or excuse Club from any of Club's obligations under this Agreement prior to the effective date of the assignment. Following the assignment, Club shall thereafter be relieved of any liability arising under this Agreement after the date of such assignment, unless such liability is based on events, activities, circumstances, acts or omissions occurring prior to the date of such assignment.

### 23.2 Prohibited Transfers; Transfers to an Affiliate.

23.2.1 Except as explicitly authorized in Sections 11.2 and 23.1, Club shall not permit, suffer or enter into an assignment, sublease, transfer, sale, conveyance, syndication or other disposition of any kind whatsoever (hereinafter collectively referred to as a "Transfer") of any of Club's interest in this Agreement or the leasehold estate or Concessions rights established in this Agreement, without the prior written approval of the City. Such approval of the City to a Transfer shall be in the sole discretion of the City. All provisions of this Agreement shall be binding upon the person to whom or to which an approved Transfer is made. Except as explicitly provided in Section 23.1, no Transfer shall in any way relieve or excuse Club from any of Club's duties, obligations, responsibilities, covenants and requirements under this Agreement.

23.2.2 Transfer to an Affiliate of Club. The Transfer of an interest in Club to an Affiliate of Club, or to an Affiliate of the parent corporation of Club, shall not be prohibited by this Article 23, and the City's consent shall not be required for such a transfer. In addition, the transfer of an interest in Club to any member of the family of James F. Goodmon shall not be prohibited by this Article 23, and the City's consent shall not be required for such a transfer.

23.3 Draft of Club Territory. Except as expressly authorized in Section 23.1, Club shall use best efforts in good faith to oppose any attempt by any person holding a franchise in the National Association or Major Leagues to draft Club's territory.

23.4 Agreement Subject to Rules of Major League Baseball and the National Association. The Parties hereby acknowledge and agree that all rights granted under this Agreement are expressly subject to, and must conform with, all baseball rules and regulations,

including, without limitation: (1) all rules, regulations, constitutions and bylaws of the league of which Club is a member; (2) all rules and regulations of the National Association of Professional Baseball Leagues, Inc. d/b/a Minor League Baseball, including the National Association Agreement; (3) the Professional Baseball Agreement; (4) the Major League Rules; and (5) any rule, regulation, restriction, guideline, resolution or other requirement issued from time to time by any baseball authority (e.g., the League President, the NAPBL President, the NAPBL Board of Trustees or the Commissioner of Baseball) including the NAPBL Gambling Guidelines.

#### ARTICLE 24 - GUARANTIES

24.1 Guaranties. The Guarantor makes the following guaranties to the City and any successor lessor under the Agreement:

- (a) The Guarantor guarantees payment of Base Rent pursuant to Section 5.1.
- (b) The Guarantor guarantees that Club shall not voluntarily play Club Home Games in a location other than the Ballpark unless the City in its sole discretion approves an alternate location.
- (c) The Guarantor guarantees performance by Club of the provisions of Section 23.5.

24.2 Expiration of Guaranties. The guaranties contained in Section 24.1 shall expire automatically: (a) if Club assigns this Agreement pursuant to Article 23 and the new lessee receives all necessary approvals from the National Association and the Commissioner of Baseball; or (b) if the term of this Agreement has expired or terminated pursuant to this Agreement and the City or successor lessor thereafter leases the Ballpark to another professional baseball team; or (c) on March 15, 2033 whichever shall first occur. The guaranties contained in Section 24.1 are subject to and conditioned upon there being no Event of Default by the City.

#### ARTICLE 25 - MISCELLANEOUS

25.1 City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE ANT) AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

25.2 Waiver. No failure by the City or Club to insist upon the strict performance of any provision of this Agreement or to exercise any right or remedy upon a breach of such provision, and no acceptance of full or partial rental payment by the City during the continuance of any such breach, shall constitute a waiver of any such breach or of such provision. No provision of this Agreement to be performed or complied with by Club or the City, and no breach of such provision, shall be waived, altered or modified except by a written instrument executed by the City or Club, as applicable. No waiver of any breach shall affect or alter this Agreement, but each and every provision of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach.

25.3 Agency. Nothing in this Agreement is intended or shall be interpreted to create a joint venture or partnership between the City and Club or make the City the partner of Club or constitute either the agent of the other, or make either party in any way responsible for the debts, losses, duties, obligations, responsibilities or liabilities of the other party. Without limiting the generality of the foregoing, the City and Club agree that in respect to use and occupancy of the Premises by Club, the Operation of Concessions, and all other activities and services of Club pursuant to this Agreement, Club shall be acting as a lessee and independent contractor on Club's behalf. Club agrees that it will not represent to anyone that its relationship to the City under this Agreement is other than as a lessee and independent contractor.

25.4 No Third Party Beneficiaries. The City and Club acknowledge and agree that neither intends this Agreement to confer direct benefits upon any persons other than themselves, that any benefits other persons may receive are purely incidental, and that neither intends to confer any contractual or other rights, including the right to enforce all or any portion of this Agreement, upon any such persons.

25.5 Taxes and Encumbrances. Club shall list Club's furnishings, fixtures, equipment and other personal property located on the Premises for purposes of personal property taxation, and shall promptly pay when due any and all personal property taxes imposed or assessed on the same. Club and the City shall not permit any mechanics' liens or other encumbrances or liens to exist against the Premises or the leasehold interest of Club. Club or the City, as applicable, within thirty (30) days of any such lien or encumbrance being asserted against the Premises or the leasehold interest of Club, shall either cause the same to be released of record or obtain title insurance coverage satisfactory to the other in the respect to such lien or encumbrance and proceed diligently to contest the same in good faith.

25.6 Fireworks. The parties recognize that firework displays are customary outdoor entertainment in conjunction with Club Home Games. The parties also recognize that firework displays within the City require and are subject to the prior approval of the City on a case-by-case basis. Subject to such approval and compliance with Section 26.4, firework displays may be held in the Ballpark.

25.7 Inspection and Right of Entry. The City shall have the unrestricted right to enter upon the Premises, including any and all portions used or occupied by Club. For any portion of the Premises being used or occupied by Club pursuant to this Agreement at the time of such entry, the City shall provide reasonable prior oral notice to Club.

25.8 Cost of Compliance. Except where otherwise explicitly provided in this Agreement, Club shall bear the sole cost and expense of complying with and performing all of the duties and obligations of Club under this Agreement, and the City shall bear the sole cost and expense of complying with and performing all of the duties and obligations of the City under this Agreement.

25.9 City's Sale of the Premises. The City has the unrestricted right to sell, assign and convey its interest in this Agreement, in whole or in part. Any such sale, assignment or conveyance shall be subject to the leasehold interest and other rights of Club provided in this Agreement. In the event of any such sale, assignment or transfer of the City's interest in this Agreement, the City shall be freed and relieved of all agreements, covenants and obligations of the City to be performed from and



after the date of such sale, assignment or transfer other than the obligations of the City contained in Article 12. As to the obligations contained in Article 12, the City shall not be relieved unless the purchaser, assignee or transferee demonstrates to the reasonable satisfaction of Club that such person is financially capable of assuming such obligations and is not a Prohibited Person. It shall be deemed and construed without further agreement between the parties or their successors in interest or between the par-ties and the purchaser, assignee or transferee on any such sale, assignment or transfer that such person has assumed and agreed to carry out any and all agreements, covenants and obligations of the City accruing from and after the date of such sale, assignment or conveyance. Nothing contained in this Section shall be construed to relieve the City from its responsibility to comply with the City's agreements, covenants and obligations under this Agreement required to be performed prior to the date of any such sale, assignment or conveyance of the City's interest.

25.10 Performance of Government Functions. Notwithstanding anything in this Agreement which may be to the contrary, nothing contained in this Agreement shall in any way estop, limit or impair the City from exercising or performing any regulatory, policing, legislative, governmental or other powers or functions with respect to the Premises or otherwise, including, by way of illustration but not limitation, inspection of the Premises in the performance of such functions and exercise of the power of eminent domain with respect to the Premises.

25.11 Severability. If any provision of this Agreement or its application to any person or circumstances shall, to any extent, be or become invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby. Each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law. The City and Club agree to substitute for such provision of this Agreement or the application thereof determined to be invalid or unenforceable, such other provision as most closely approximates, in a lawful manner, such invalid, illegal or unenforceable provision. If the City and Club cannot agree, they shall apply to a court of competent jurisdiction to substitute such provision as the court deems reasonable and judicially valid, legal and enforceable. Such provision determined by the court shall automatically be deemed part of this Agreement as of the date the provision of this Agreement or application thereof which such provision replaces was determined to be invalid or unenforceable.

25.12 Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. Any litigation arising out of this Agreement shall be brought in courts sitting in North Carolina.

25.13 Binding Effect. All benefits, privileges, burdens, obligations and duties created by this Agreement shall bind, attach and inure to the benefit and burden of the successors and assigns of the City and Club. This Section shall not be interpreted so as to confer any independent right in Club to convey, transfer or assign any such benefits, privileges, burdens, obligations and duties.

25.14 Notices. Except where oral notice has been explicitly provided for in this Agreement, any notice required to the City or Club by the terms of this Agreement shall be in writing and be deemed given and received on the date of the mailing of such notice in writing to the City or Club, as the case may be, provided such notice is transmitted by certified or registered mail, return receipt requested, postage prepaid, and addressed to the party due such notice as follows:

To the City:  
Thomas Bonfield  
City Manager  
City of Durham  
101 City Hall Plaza  
Durham, NC 27701  
Fax (919) 560-4949.

With a copy to:  
Director of General Services  
City of Durham  
2011 Fay Street  
Durham, NC 27704  
Fax (919) 560-4196

To Club:  
The Durham Bulls Baseball Club, Inc.  
409 Blackwell Street  
Durham, North Carolina 27701  
Attn: George W. Habel, Vice President

With a copy to:  
The Durham Bulls Baseball Club, Inc.  
2619 Western Boulevard  
Raleigh, North Carolina 27606  
Attn: General Counsel

To Guarantor:  
Capitol Broadcasting Company, Incorporated  
2619 Western Boulevard  
Raleigh, North Carolina 27606  
Attn: James F. Goodman, President

With a copy to:  
Capitol Broadcasting Company, Incorporated  
2619 Western Boulevard  
Raleigh, North Carolina 27609  
Attn: General Counsel

The parties shall, by written notice to the other party, each have the right to change the person and address to which notices are to be sent.

25.15 Headings. The table of contents and all headings that appear after article and section numbers in this Agreement are included for convenience only and shall not affect the construction or interpretation of the provisions of this Agreement.

25.16 Entire Agreement. This Agreement contains and represents the entire and integrated agreement between the City and Club and, other than the Development Agreement, supersedes all prior negotiations, representations or agreements, whether written or oral. With the exception of the Development Agreement, there are no promises, agreements, conditions, inducements, warranties or understandings, written or oral, express or implied, between the parties other than as set forth or referenced in this Agreement.

IN WITNESS WHEREOF, the City and Club have caused this Agreement to be executed under seal as of the day and year first above written.

*[SIGNATURES APPEAR ON FOLLOWING PAGES]*

**CITY OF DURHAM**

ATTEST:

\_\_\_\_\_

By: \_\_\_\_\_

Preaudit Certification:

**THE DURHAM BULLS BASEBALL CLUB, INC.**

ATTEST:

\_\_\_\_\_  
Secretary  
(SEAL)

By: \_\_\_\_\_  
President

State of \_\_\_\_\_

**THE DURHAM BULLS  
BASEBALL CLUB, INC.**

County of \_\_\_\_\_

I, a notary public in and for the aforesaid county and state, certify that

\_\_\_\_\_ personally appeared  
before me this day and stated that he or she is \_\_\_\_\_ Secretary of **THE DURHAM  
BULLS BASEBALL CLUB, INC.**, a corporation, and that by authority duly given and as the  
act of the corporation, the foregoing contract or agreement with the City of Durham was signed  
in its name by its \_\_\_\_\_ President, whose name is  
\_\_\_\_\_, sealed with its corporate seal, and attested  
by him/herself as its said Secretary or Assistant Secretary. This the \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_\_.

My commission expires:

\_\_\_\_\_

\_\_\_\_\_

Notary Public

## EXHIBIT A

BEING all of Lot 1 as shown on the survey made by Jeffery P. Williams, NCPLS L-4204, entitled "Final Plat – Property of City of Durham, Subdivision, Recombination and Blackwell St. and Vivian St. Right of Way Dedication of American Tobacco Campus Phase III", dated September 27, 2006, last revised January 22, 2007, and recorded in Plat Book 176, Pages 73, 76 and 79 of the Durham County Public Registry, and as modified by the survey made by Jeffery P. Williams, NCPLS L-4204, entitled "Exempt Final Recombination Plat, Property of Diamondview III/DBAP", dated March 5, 2012, and recorded in Plat Book 189, Page 90 of the Durham County Public Registry.

EXHIBIT B

<b>DBAP CAPITAL MAINTENANCE AND REPAIR ITEMS</b> (Paid for from Club's Annual Maintenance and Repair Obligation)	
HVAC Equipment	
Plumbing Fixtures	
Bathroom Partitions Replacement	
Water Heater -Main Gas	
Electrical Equipment	
Ceiling Fans - Stands	
Standing Metal Seam Roof Repairs	
Waterproofing Membrane Material Replacement	
Seat Replacement	
Seat Repairs	
Elevators	
New Service Elevator	
Stadium Signage	
Skybox Remodel	
Field Maintenance (Sod, Warning Track, Infield)	
Turf Renovation	
Complete Field Renovation (field/drainage)	
Ball Field Equipment	
Tarp	
Backstop Netting	
Sound System and Audio	
Turnstiles (may upgrade to scanner system)	
Box Office Equipment	
Blue Monster and Manual Scoreboard	

<b>DBAP CAPITAL MAINTENANCE AND REPAIR ITEMS</b> (Paid for from Club's Annual Maintenance and Repair Obligation)	
Field Padding	
Smoking Bull	
Carpets	
Main Store replacements	
LF Store replacements	
Resilient Flooring	
Ceilings - Tile	
Ceilings - Grid	
Painting-Structural	
Painting-Nonstructural	
Painting-Interiors	
Clubhouse FF&E	
Dugout Improvements	
Concessions Equipment	
Batting Cage Replacement	
Outdoor tables and chairs	
Landscaping Replanting-Annual	
Landscape Renovation	
Field Lighting - Relamp, Re-aim, Clean	
Exterior Brick - Clean/Point up/seal	
Caulking/Joint Maintenance	
FF&E - Picnic Areas	
Terrace Box Tables	
Picnic Furniture	
Picnic Awnings	
Equipment in Exhibit C	



EXHIBIT C

Equipment List	
Scrubber	
Power wash trailer	
Heated pressure washers	
Air compressor	
Trash cans	
Rolling trash carts (big and small)	
Backpack blowers	
Refrigerator in shop	
Extra light bulbs, ceiling tiles, paint, HVAC controls, air filters, plumbing parts/supplies	
Keys	
Extension ladder	
10 ft. and 12 ft. ladders	
Furniture dollies	
Parts/materials/supplies for chillers and boilers	
Drill press	
Golf cart	